

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 In Re:

11 YBA NINETEEN, LLC,  
12 Debtor.

Civil No. 13cv2426-WQH-RBB

Bankruptcy No. 13-00968-LA11  
[Bankruptcy Appeal #3]

14 YBA NINETEEN, LLC,  
15 Appellant,

**ORDER**

16 v.

17 INDYMAC VENTURE, LLC,  
18 Appellee.  
19

20 HAYES, Judge:

21 The matter before the Court is the Renewed Ex Parte Motion for Stay Pending Appeal,  
22 filed by Appellant YBA Nineteen, LLC (“YBA” or “Debtor”). (ECF No. 11).

23 **I. Background**

24 On October 8, 2013, YBA, the debtor in the underlying bankruptcy case, filed a Notice  
25 of Appeal of an “Order Converting Case to One Under Chapter 7” (“Order Converting  
26 Case”), issued by the Bankruptcy Court on October 4, 2013. (ECF No. 1). The Order  
27 Converting Case converted the underlying bankruptcy proceeding from one under Chapter  
28 11 to one under Chapter 7. The Bankruptcy Court ordered that “[p]ursuant to 11 U.S.C. §

1 1112(b)(4), this case be converted to one under Chapter 7 for ‘cause’ including: (1) Debtor’s  
 2 continuing failure to comply with the Scheduling Order; (2) Debtor’s failure to timely file  
 3 [Monthly Operating Reports]; and (3) the substantial and continuing loss to or diminution  
 4 of the estate and the absence of reasonable likelihood of rehabilitation.” *Id.* at 8 (citing 11  
 5 U.S.C. §§ 1112(b)(4)(A), (E) & (F)).

6 On October 8, 2013, YBA filed an election to have the appeal heard by this Court. *Id.*  
 7 This is the third appeal to this Court in this bankruptcy proceeding. *See In re YBA Nineteen*,  
 8 S.D. Cal. Case No. 13cv1326-WQH-RBB; *In re YBA Nineteen*, S.D. Cal. Case No.  
 9 13cv2239-WQH-RBB.<sup>1</sup>

10 On October 15, 2013, YBA filed an Ex Parte Motion for Stay Pending Appeal. (ECF  
 11 No. 4). YBA moved pursuant to Federal Rule of Bankruptcy Procedure 8005 for an order  
 12 staying the Bankruptcy Court’s Order Converting Case.

13 On October 17, 2013, the Court issued an Order denying the Ex Parte Motion for Stay  
 14 Pending Appeal. (ECF No. 7). The Court found that YBA had failed to demonstrate that  
 15 irreparable injury was likely in the absence of a stay of the Order Converting Case.

16 On October 30, 2013, YBA filed the Renewed Ex Parte Motion for Stay Pending  
 17 Appeal. (ECF No. 11). YBA states:

18 [T]he Debtor requests that the District Court consider the application based on  
 19 the developments since its Order was issued on October 17, 2013. These  
 20 developments include: 1. Debtor’s concession that absent a stay pending appeal  
 21 it has lost control over the initial relief from stay appeal and Indymac  
 22 Adversary Action, as defined below, 2. Absent a stay pending appeal the  
 Debtor has been, in essence, evicted from the Property of the estate; 3. Absent  
 a stay pending appeal the Trustee will incur substantial legal costs and  
 contracting costs that would be avoided if the order converting the case is  
 overturned.

23 *Id.* at 4.

24 On October 31, 2013, Appellee IndyMac Venture, LLC (“IndyMac”) filed an  
 25 opposition to the Renewed Ex Parte Motion for Stay Pending Appeal. (ECF No. 12).

---

27 <sup>1</sup> In the second appeal, the Court issued a stay preventing Appellee IndyMac  
 28 Venture, LLC from taking any further action as to the real property at issue. (S.D. Cal.  
 Case No. 13cv2239, ECF No. 6).

IndyMac contends that the motion should be denied for failure to show a likelihood of irreparable injury, or alternatively, the Court should set a briefing schedule to allow IndyMac to provide evidence to rebut the evidence offered in YBA's motion.

On November 1, 2013, YBA filed a reply brief. (ECF No. 13).

## **II. Discussion**

Federal Rule of Bankruptcy Procedure 8005 provides that a district court may order a stay of a judgment, order or decree of a bankruptcy court pending appeal. *See* Fed. R. Bankr. P. 8005. "When deciding whether to issue a discretionary stay pending a bankruptcy appeal, courts use the following four factors: (1) Movant's likelihood of success on the merits of the appeal; (2) significant and/or irreparable harm that will come to Movant absent a stay; (3) harm to the adverse party if a stay is granted; and (4) where the public interest lies." *In re North Plaza, LLC*, 395 B.R. 113, 119 (S.D. Cal. 2008) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *see also id.* at 119-20 (noting that "these factors were imported from the standard for deciding preliminary injunctions or staying them pending appeal"). "[T]he person or entity seeking injunctive relief must demonstrate that irreparable injury is *likely* in the absence of an injunction. An injunction will not issue if the person or entity seeking injunctive relief shows a mere possibility of some remote future injury, or a conjectural or hypothetical injury." *Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Trust*, 636 F.3d 1150, 1160 (9th Cir. 2011) (quotations omitted).

The Court has reviewed the evidence attached to the Renewed Ex Parte Motion for Stay Pending Appeal, as well as the other filings in this appeal and the related appeals. The Trustee's actions toward the real property at issue, including hiring a contractor and security guards, appear to be designed to improve or protect the property. Although YBA contends that the Trustee's actions will unnecessarily increase the costs to the estate, the Court does not find that the Trustee's alleged actions are unreasonable under the facts of this case. There is no evidence that the Trustee is attempting to finalize a sale of the property prior to the resolution of this appeal. The Court does not find that the dismissal of adversarial action against IndyMac supports a finding of irreparable injury because the dismissal was without

prejudice and YBA has identified no statute of limitation issues which might prevent the refiling of the adversarial action. The Court finds that YBA has failed to demonstrate that the Trustee has taken actions that have caused or likely will cause YBA or the estate irreparable injury. Because YBA has failed to meet its burden of demonstrating that irreparable injury is likely in the absence of a stay, the Court “need not decide whether [YBA] is likely to succeed on the merits.” *Oakland Tribune, Inc. v. Chronicle Publ’g Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985). The Renewed Ex Parte Motion for Stay Pending Appeal is denied.

### III. Conclusion

IT IS HEREBY ORDERED that the Renewed Ex Parte Motion for Stay Pending Appeal is DENIED. (ECF No. 11).

IT IS FURTHER ORDERED that the Court will hear oral argument on this appeal from the bankruptcy court on **January 31, 2014 at 10:00 a.m. in Courtroom 14B**. The Court orders the following appeal and briefing schedule: YBA shall file any briefing and supporting exhibits or materials from the record on appeal no later than **November 27, 2013**; IndyMac shall file any briefing and supporting exhibits or materials from the record no later than **December 20, 2013**; YBA may file a reply brief no later than **January 10, 2014**. The Trustee may file a brief in response to YBA’s brief no later than **December 20, 2013**. Any requirements or provisions of Rules 8006-8009 of the Federal Rules of Bankruptcy Procedure which are inconsistent with this Order are suspended pursuant to Federal Rule of Bankruptcy Procedure 8019.

DATED: November 6, 2013

  
**WILLIAM Q. HAYES**  
 United States District Judge